IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.245 OF 2006

Mr.Suresh Rathod & anr. .. .. Petitioners
v/s.
The Bombay Mun.Corpn. & ors. .. Respondents

Mr.Chirag Balsara with Mr.Naushad Engineer i/by M/s.RMG Law Associates for petitioners.

Ms.Aruna Savla for res.No.1.

Mr.G.V. Murti for res.No.3.

Mr.V.R.Sutrale for res.No.5.

Mr.Anil Singh for res.Nos.6 and 7.

CORAM : H.L. GOKHALE &
ABHAY S. OKA, JJ.

DATED : 15th February 2006

P.C. :

1. Heard the learned Counsel for the parties.

2. Leave to amend prayer clause (f). Amendment to be carried out forthwith.

3. The petitioners are the landlords of the property situated at Mahatma Gandhi Road, Kandivali (West), Mumbai. Respondent Nos.3 to 7 are the tenants of the petitioners occupying the shops in the property of the petitioners. Respondent Nos.4 to 7 were having their shops facing Mahatma Gandhi Road, whereas respondent

No.3 was having his shop No.7 on an inner side. It appears that in the road widening these shops tenanted by respondent Nos.4 to 7, had to be demolished. It is the case of the petitioners that now respondent Nos.4 to 7 have started reconstruction and have, in fact, reconstructed their shops by shifting them behind and on to the open space adjoining the building, thereby the entire open space towards the entrance of the road has been blocked.

4. The case of respondent Nos.4 to 7 is that they have co-operated with the Municipal Corporation and have shifted behind on to the open space adjoining the building and that now their structures cannot be removed. They are contending that they are the tenants over the last 50 years and in this fashion, the landlords are trying to get rid of them from the concerned premises. Mr.Anil Singh and Mr.Sutrale appear for them.

5. Mr.Murti appearing for respondent No.3 has pointed out that respondent No.3’s structure was on the rear side and in the process of construction of these shops of respondent Nos.4 to 7, respondent No.3 is the sufferer and the space which was occupied by his shop is now fully

covered in the reconstruction carried out by respondent Nos.4 to 7. Respondent No.3 is supporting the petitioners. The petitioners are contending that neither this construction is with the permission of the Municipal Corporation nor with the permission of the landlords.

6. In the circumstances, in our view, the proper course will be that the Municipal Corporation ought to decide as to whether these structures of respondent Nos.4 to 7 are to be retained. They are admittedly not within the road line and are inside the property of the petitioners. Therefore, it will have to be decided whether they are constructed with the permission of the Municipal Corporation. For that purpose, it will issue a notice to respondent Nos.4 to 7 and after hearing them, decide as to whether those structures should survive or they should be removed. The Municipal Corporation is expected to take appropriate decision after hearing all parties. The Municipal Corporation will also hear the petitioners while arriving at that decision.

7. On the Municipal Corporation giving the necessary notice, respondent Nos.4 to 7 as well as

the petitioners will file their reply within three weeks. The officer concerned will take his decision within six weeks thereafter. If the order is adverse to respondent Nos.4 to 7, the order will not be acted upon for a period of two weeks after the same is served upon them.

8. Petition disposed of with the above order.

(H.L. GOKHALE, J.)

(ABHAY S. OKA, J.)